UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MY FIRST BIKE PRODUCTIONS, INC., Plaintiff, v. MYSPACE, INC., a Delaware Corporation, d/b/a Myspace.com, DIRECTV, INC., a California corporation, FOX INTERACTIVE MEDIA, INC., a Delaware corporation, Defendants.	CASE NO. 1:07-CV-0459-RLY-TAB

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Defendants MySpace, Inc. ("MySpace"), DIRECTV, Inc. ("DIRECTV"), and Fox Interactive Media, Inc. ("FIM") (collectively, "Defendants"), by counsel, pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure and S.D.Ind.L.R. 7.1(a), respectfully submit the following memorandum of law in support of their Motion to Dismiss.

I.
INTRODUCTION

As alleged in the Complaint, in 2005, plaintiff My First Bike Productions, Inc. ("Plaintiff"), an Indiana television production company, decided to produce a program that would track users of the wildly popular social networking website, MySpace.com. Plaintiff toured the country filming its program and, while visiting California, showed up at the doorstep of MySpace, Inc. ("MySpace"), the California company that owns MySpace.com. During a brief "interview," Plaintiff's film crew asked MySpace whether it wanted to participate in Plaintiff's program or, better yet, to buy it. As Plaintiff readily admits, MySpace rejected both offers.

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Shortly thereafter, a new program – also based on the idea of tracking MySpace.com users – began airing on a satellite television channel owned by DIRECTV, Inc., another California company whose only connection to MySpace is a common minority shareholder. Plaintiff contends DIRECTV's program is based on Plaintiff's program and, with the help of MySpace, DIRECTV stole plaintiff's idea and concept.

Perhaps realizing that Congress expressly excluded ideas and concepts from the protections of the Copyright Act, Plaintiff filed this lawsuit alleging state law claims of "plagiarism," unjust enrichment, theft and conversion. Plaintiff also claims MySpace breached the parties' "implied" contract supposedly formed during Plaintiff's brief visit to California (when MySpace rejected Plaintiff's offer to enter into an agreement). Based on the well-settled case law of this Circuit, Plaintiff's Complaint is both procedurally and substantively defective beyond repair.

First, this Court has no personal jurisdiction over MySpace, FIM, or DIRECTV ("Defendants"). The mere fact that MySpace's non-commercial website can be accessed by Indiana residents does not, as a matter of law, create a sufficient connection with Indiana for this Court to assert personal jurisdiction over MySpace (let alone FIM whose only connection to this case is its ownership of MySpace's shares). Nor can Plaintiff show that DIRECTV's broadcast of satellite television programming across the country, including Indiana, has Indiana as its "focal point" such that DIRECTV would be subject to personal jurisdiction in Indiana under the facts of this case.

Second, Plaintiff's state law claims of "plagiarism," unjust enrichment, theft and conversion of its intellectual property are preempted as a matter of law under the Copyright Act. Courts have repeatedly ruled that veiled copyright claims such as these are preempted and may not be asserted as state law claims. Indeed, this Court has expressly held that "plagiarism" claims purportedly asserted under Indiana law are preempted by the Copyright Act.[1]

Third, even if the express preemption provisions of the Copyright Act and well-settled judicial precedent on preemption were to be ignored, Plaintiff's state law claims would still fail because Plaintiff's admissions in the Complaint negate the necessary elements of those state law claims. For these reasons, discussed more fully below, Plaintiff's Complaint should be dismissed in its entirety.

II. BACKGROUND

A. MySpace

MySpace owns and operates MySpace.com (Sung Aff. at ¶ 2),[2] the most visited website in the United States. Commonly referred to as a "social networking website," MySpace.com allows its members to create online "profiles," which are individual web pages where members post photographs, videos, and information about their lives and interests. *See id.* MySpace.com members use their online profiles as a vehicle to become part of an online community of people with common interests. *See id.* MySpace.com is free to users who agree to the MySpace.com terms of use. *See id.* at ¶ 3. MySpace.com is not a commercial website in that it does not sell its products or services to users. *See id.*

MySpace, a Delaware corporation, is headquartered in Beverly Hills, California. *See* Sung Aff. at ¶ 4. MySpace has no contacts with the state of Indiana; it does not own or rent any facilities, offices, or property in Indiana; and it does not employ any Indiana residents. *See id.* MySpace has no bank accounts in Indiana, nor does it pay taxes there. *See id.*

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[1] *Caldwell-Gadson v. Thomson Multimedia, S.A.*, 2001 WL 1388052, *4 (S.D. Ind. 2001).

[2] The Affidavit of Jae Sung, filed concurrently herewith as Exh. A, is abbreviated as the "Sung Aff." throughout.

B. Fox Interactive Media

FIM is a Delaware corporation headquartered in Los Angeles. *See* Affidavit of Marilyne Dotson, filed concurrently herewith as Exh. B ("Dotson Aff.") at ¶ 2. FIM is the parent company for the entities operating various Internet and interactive media businesses including, but not limited to IGN.com, Rottentomatoes.com, Askmen.com, and MySpace.com. *See id.* Both FIM and MySpace, whose ultimate parent is News Corporation, observe separate corporate formalities, have their own boards of directors, and their own executive management teams. *See id.* at ¶ 4; Sung Aff. at ¶ 5.

FIM has no contacts with Indiana. *See* Dotson Aff. at ¶ 3. FIM does not own or rent any facilities, offices, or property in Indiana; FIM does not recruit or employ any Indiana residents; FIM has no bank accounts in Indiana; FIM does not pay taxes in Indiana; and FIM has no direct business agreements with any person or company in Indiana. *See id.*

C. DIRECTV

DIRECTV is the leading provider of direct broadcast satellite ("DBS") service in the United States. *See* Affidavit of Patricia L. Ishimoto, filed concurrently herewith as Exh. C ("Ishimoto Aff.") at ¶ 2. Through its DBS service, DIRECTV provides television programming to more than 16 million subscribers nationwide. *See id.* DIRECTV has no corporate affiliation to MySpace or FIM other than the fact that News Corporation owns a minority interest of DIRECTV shares. *See id.* at ¶ 5. DIRECTV has its own board of directors and executives. *See id.*

DIRECTV is incorporated in California and headquartered in El Segundo, California. *See* Ishimoto Aff. at ¶ 3. DIRECTV has no offices in Indiana and does not maintain any Indiana bank accounts. *See id.* at ¶ 3. Though DIRECTV has approximately 9,000 employees, only three of them – area sales managers – are Indiana residents. *See id.*

D. Plaintiff's Television Program

Plaintiff is an Indiana television production company. *See* Cplt. at ¶¶ 2, 6. Plaintiff claims that in late 2005 it began developing and producing a television program focusing on eight users of MySpace.com and exploring the different ways each of them used the popular website. *See* Cplt. at ¶¶ 7-9. The program was entitled "Top 8 Tour: From MySpace to YourSpace" ("Plaintiff's Program"). *See* Cplt. at ¶ 8. Without ever contacting MySpace, and without any involvement of MySpace whatsoever, Plaintiff traveled around the country with a film crew and visited, interviewed, and filmed eight MySpace.com users that would be the subject of Plaintiff's Program. *See id.*

In January 2006, while touring the country and producing its program, members of Plaintiff's film crew sought to interview, and supposedly met with, two employees of MySpace (which, as Plaintiff concedes, is located in California). *See* Cplt. at ¶¶ 3, 10. During this meeting, Plaintiff's film crew asked the MySpace employees whether MySpace wanted to become involved with Plaintiff's Program, and offered to sell MySpace the rights to Plaintiff's Program. *See* Cplt. at ¶ 11. MySpace declined to participate in Plaintiff's Program and rejected Plaintiff's offer to purchase any rights to it. *See* Cplt. at ¶ 13. No FIM or DIRECTV employees are alleged to have been at this meeting. *See id.* Plaintiff does not contend that it discussed or reached any express agreement with MySpace concerning the supposed confidentiality of Plaintiff's Program – nor could Plaintiff make such a claim with a straight face considering Plaintiff had already openly toured the country to produce and publicize its program.

E. DIRECTV's Television Program

In late 2006, DIRECTV developed its own television program called "Project MyWorld," which followed three women traveling around the world to meet their MySpace.com "friends" in real life ("DIRECTV's Program").[3] *See* Ishimoto Aff. at ¶ 4. Plaintiff alleges DIRECTV's Program was "based on" Plaintiff's Program and that DIRECTV (in collusion with MySpace) "used . . . the concepts, ideas, and storylines" underlying Plaintiff's Program as the basis for DIRECTV's Program without Plaintiff's consent. *See* Cplt. at ¶¶ 15-17. Apparently, Plaintiff seeks a monopoly on the not-so-original idea of basing a television program on MySpace.com (the most popular website in the world). This lawsuit followed.

F. Plaintiff's Veiled Copyright Claims and Supposed Breach of Contract Claim

The Copyright Act precludes Plaintiff from basing an infringement claim on the mere "idea" of a television program based on MySpace users. And, as discussed below, the Copyright Act also preempts state law claims based on matters protected by, or expressly excluded from, the Copyright Act. Nonetheless, Plaintiff's Complaint asserts a series of "state law" claims that are nothing more than poorly disguised copyright claims. Plaintiff is suing Defendants for (1) unjust enrichment (alleging Defendants unlawfully exploited the ideas and expression underlying Plaintiff's Program); (2) "plagiarism" (alleging Defendants plagiarized, misappropriated, and converted the ideas and expression embodied in Plaintiff's Program); and (3) punitive treble damages under the Indiana Crime Victims' Act ("ICVA") (alleging Defendants' "theft" and "conversion" of Plaintiff's ideas and expression). *See* Cplt. at ¶¶ 23-34.

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[3] A more detailed description of "Project MyWorld" is available at the judicially noticeable Internet website www.directv.com/DTVAPP/global/contentPage.jsp?assetId=P3960014. *See Denius v. Dunlap*, 330 F.3d 919, 926 (7th Cir. 2003) (court may take judicial notice of Internet website), citing *Laborers' Pension Fund v. Blackmore Sewer Constr., Inc.*, 298 F.3d 600, 607 (7th Cir. 2002) (same).

Plaintiff also asserts a breach of contract claim against MySpace. Though Plaintiff admits MySpace flatly rejected its offer to purchase Plaintiff's Program, Plaintiff contends that an "implied" contract was formed between the parties under which MySpace agreed not to use or disclose the ideas and expression embodied in Plaintiff's Program. *See* Cplt. at ¶¶ 19-22. Plaintiff's contract claim ignores the fact that prior to the parties' supposed implied non-disclosure agreement, Plaintiff had been publicly touring the country with the production of its program, thereby negating any claim that its program was a secret.

III.
ARGUMENT

A. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE COURT LACKS PERSONAL JURISDICTION OVER DEFENDANTS

Due process limits when a court may exercise personal jurisdiction over nonresident defendants. *Jennings v. AC Hydraulic A/S*, 383 F.3d 546, 549 (7th Cir. 2004), citing *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102, 108 (1987); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).[4] "This limitation allows potential defendants to structure their contacts with different forums so as to plan where their business activities will and will not render them liable to suit." *Id.* In order for personal jurisdiction to be proper, a

[4] Analysis of personal jurisdiction in Indiana used to be viewed as a two-part test, starting with whether jurisdiction is proper under Indiana's long arm statute, Indiana Trial Rule 4.4(A) and, if so, analyzing whether jurisdiction comports with due process under the United States Constitution. *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 780 (7th Cir. 2003). However, in 2003, Indiana Trial Rule 4.4(A) was amended to extend personal jurisdiction to the limits of the federal Due Process Clause. *LinkAmerica Corp. v. Cox*, 857 N.E.2d 961, 967 (Ind. 2006). The Indiana Supreme Court has recently made it clear that the two-part test is no longer necessary in light of the amendment to Indiana Trial Rule 4.4(A). *Id.* ("The 2003 amendment to Indiana Trial Rule 4.4(A) was intended to, and does, reduce analysis of personal jurisdiction to the issue of whether the exercise of personal jurisdiction is consistent with the Federal Due Process Clause."). Instead, personal jurisdiction is determined solely by federal due process principles. Consequently, Defendants will discuss personal jurisdiction under the federal Due Process Clause herein.

defendant must have established minimum contacts with the forum state. *Int'l Med. Group, Inc. v. Am. Arbitration Ass'n, Inc.*, 312 F.3d 833, 846 (7th Cir. 2002). Once minimum contacts have been shown, courts then examine other factors, such as the forum's interest in adjudicating the dispute and the burden on the defendant of appearing in the forum, in order to determine whether the exercise of personal jurisdiction satisfies traditional notions of fair play and substantial justice. *Id.*

Personal jurisdiction comes in two forms: specific and general. If a defendant's contacts with the forum state are "related to the subject matter of the lawsuit," this may give rise to specific personal jurisdiction, i.e., "jurisdiction over the person for a case arising from those contacts." *International*, 312 F.3d at 846, citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). When a defendant's contacts with the forum state are "unrelated to the subject matter of the lawsuit, general personal jurisdiction may be established if the defendant's contacts are so continuous and systematic that the defendant could reasonably foresee being haled into court in that state for any matter." *Id.*

On a motion to dismiss for lack of personal jurisdiction, the plaintiff must establish either specific or general personal jurisdiction. *Jennings*, 383 F.3d at 458. Here, because MySpace's only contact with Indiana is its non-commercial website, there is no basis for personal jurisdiction. The same is true for FIM, whose only connection to Indiana, let alone this lawsuit, is its ownership of MySpace. Nor does this Court have personal jurisdiction over DIRECTV because its limited contacts with Indiana are not aimed at Indiana and are unrelated to the conduct giving rise to Plaintiff's claims.

(1) The Court Has No General Jurisdiction Over Defendants

As noted above, general jurisdiction (unlike specific jurisdiction) allows a defendant to be sued in the forum regardless of the subject matter of the litigation. "However, the constitutional requirement for general jurisdiction is considerably more stringent than that required for specific jurisdiction." *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 787 (7th Cir. 2003) (internal quotes omitted). "General jurisdiction is permitted only where the defendant has continuous and systematic general business contacts with the forum." *Id.*, citing *Helicopteros*, 466 U.S. at 416 (emphasis added). Those contacts must be "so extensive to be tantamount to [defendant] being constructively present in the state . . . ." such that it would be foreseeable for the defendant to be sued in the forum on any matter. *Id.* In determining whether a defendant's contacts with the forum state are sufficiently extensive, courts consider whether the defendant has offices or employees in the forum (*Que Sera Promotions, Inc. v. Poughkeepsie Ford, Inc.*, 2005 WL 2896703, *3 (N.D. Ind. 2005)), whether the defendant owns property in the forum (*D'Onofrio v. Il Mattino*, 430 F.Supp.2d 431, 440 (E.D. Pa. 2006)), whether the defendant has bank accounts or pays taxes in the forum (*Southmark Corp. v. Life Investors, Inc.*, 851 F.2d 763, 773 (5th Cir. 1998), and whether defendant regularly and continuously conducts business in the forum state (*Purdue*, 338 F.3d at 786).

Plaintiff's Complaint fails to allege *any* facts that could support general personal jurisdiction over MySpace. As Plaintiff admits, MySpace is a Delaware corporation headquartered in California. *See* Cplt. at ¶¶ 3, 5. All of MySpace's executive offices are located in California. *See* Sung Aff. at ¶ 4. MySpace does not own property in Indiana, does not employ Indiana residents, has no bank accounts in Indiana, and does not pay taxes in Indiana. *See* Sung Aff. at ¶ 4.

The only conceivable, albeit tenuous, connection between MySpace and Indiana is the fact that Indiana residents can access MySpace's website, MySpace.com (just like any other Internet website). However, courts – including the Seventh Circuit – uniformly hold that the mere maintenance of a "passive" (i.e., offering no opportunity to conduct business) website is not sufficient to confer general personal jurisdiction over a defendant. *Jennings*, 383 F.3d at 550 ("maintenance of a passive website does not support the exercise of personal jurisdiction over that defendant in a particular forum just because the website can be accessed there"). The operation of an Internet website is not sufficient to confer personal jurisdiction unless the defendant "uses the Internet to actively enter into contracts and conduct business in the forum state." *Rolls-Royce Corp. v. Alcor Engine Co., Inc.*, 2005 WL 1875770, *5 (S.D. Ind. 2005) (finding that defendant did not conduct substantial business through its website with Indiana residents and dismissing complaint for lack of personal jurisdiction); *Search Force, Inc. v. Dataforce Int'l, Inc.*, 112 F.Supp.2d 771, 779 (S.D. Ind. 2000) (finding that defendant's website did not "allow for consummation of a business transaction" and dismissing complaint for lack of personal jurisdiction). MySpace.com is a free, non-commercial website. *See* Sung Aff. at ¶ 3. It is a passive website in the sense that consumers cannot order and pay for MySpace's goods or services through MySpace.com. *Id.*; *Jennings*, 383 F.3d at 549; *Rolls-Royce*, 2005 WL 1875770, *5.

Like MySpace, DIRECTV has no "continuous or systematic" contacts with Indiana. DIRECTV is a Delaware corporation headquartered in El Segundo, California. *See* Ishimoto Aff. at ¶ 3. DIRECTV has no Indiana offices and no Indiana bank accounts. *See id.* Only three of DIRECTV's 9,900 employees are Indiana residents. *See id.*

DIRECTV does, however, distribute its DBS television programming throughout the country, including Indiana. *See* Ishimoto Aff. at ¶ 2. But the mere fact that DIRECTV places its television programming into Indiana's "stream of commerce" is not, by itself, sufficient to confer general personal jurisdiction over DIRECTV. *Purdue*, 338 F.3d at 788-789 (the "stream of commerce theory . . . is relevant only to the exercise of specific jurisdiction; it provides no basis for exercising general jurisdiction over a nonresident defendant") (emphasis added).

FIM's supposed connection to Indiana is even more remote than MySpace and DIRECTV. FIM is a Delaware corporation, with all of its executive offices in California. *See* Dotson Aff. at ¶ 3. FIM has no offices in Indiana, owns no property or facilities in Indiana, has no Indiana bank accounts, does not pay taxes in Indiana, and does not employ any Indiana residents. *See id.* FIM has no direct business agreements with any person or company in Indiana. *See id.* Indeed, FIM's only connection to Plaintiff's lawsuit, let alone Indiana, is being the parent company of MySpace and, like MySpace, an indirect subsidiary of News Corporation. *See* Cplt. at ¶ 5.[5] FIM's vicarious connection to Indiana through MySpace is woefully inadequate to support general personal jurisdiction. FIM and MySpace are separate companies, and each observes the corporate formalities required by their state of incorporation. *See* Dotson Aff. at ¶ 4; Sung Aff. at ¶ 5. Under these circumstances, "personal jurisdiction cannot be premised on corporate affiliation or stock ownership alone . . . ." *Central States, Se. & Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 943 (7th Cir. 2000) (emphasis added); *see also*, *Purdue*, 338 F.3d at 788, fn.17 ("as a general rule, the jurisdictional contacts of a subsidiary are not imputed to the parent"). In sum, this Court does not have general jurisdiction over any of the Defendants.

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[5] As discussed above, News Corporation is a minority shareholder of DIRECTV. *See* Ishimoto Aff. at ¶ 5.

(2) The Court Has No Specific Jurisdiction Over Defendants

Absent a finding of general jurisdiction over a defendant, courts may consider whether the defendant's limited contacts with the forum, if any, are sufficient to confer specific jurisdiction. *International*, 312 F.3d at 846. This is a two-step process. First, the Court must decide whether the defendant "purposefully established minimum contacts with the forum state" such that the defendant "should reasonably anticipate being haled into court." *RAR, Inc. v. Turner Diesel Ltd.*, 107 F.3d 1272, 1277 (7th Cir. 1997). In the case of an intentional tort, it is not enough to show that an Indiana resident was harmed by an out-of-state defendant's conduct. *Wallace v. Herron*, 778 F.2d 391, 394 (7th Cir. 1985), citing *Calder v. Jones*, 465 U.S. 783, 788-789 (1984). Instead, the defendant must have had contacts "expressly aimed" at the forum state. *Id.*; *IMO Indus., Inc. v. Kiekert AG*, 155 F.3d 254, 261 (3rd Cir. 1998) (plaintiff must show that the forum state was the "focal point" of defendant's conduct). Similarly, "an out-of-state party's contract with an in-state party is alone not enough to establish the requisite minimum contacts." *RAR*, 107 F.3d at 1277. Rather, as explained by the Seventh Circuit:

> [P]rior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing must indicate the purposeful availment that makes litigating in the forum state foreseeable to the defendant.

Id. (internal quotes omitted).

Second, specific jurisdiction requires that "the action must *directly arise* out of the specific contacts between the defendant and the forum state." *Id.* at 1278 (italics in original), citing *Sawtelle v. Farrell*, 70 F.3d 1381, 1389 (1st Cir. 1995). "Specific jurisdiction cannot lie without a connection between the defendants' [forum state] activity and the claims alleged in the complaint." *Steel Warehouse of Wis., Inc. v. Leach*, 154 F.3d 712, 715 (7th Cir. 1998) (affirming dismissal of complaint for lack of personal jurisdiction where plaintiff failed to allege sufficient "connection" between defendants' activities in forum and conduct at issue in complaint).

Here, Plaintiff has not alleged, nor can it establish, that MySpace purposefully availed itself of the protections of Indiana law or deliberately engaged in activities in Indiana. As discussed above, the mere maintenance of a passive non-commercial Internet website is not a sufficient minimum contact to establish personal jurisdiction. *Jennings*, 383 F.3d at 549. Nor can it be said that MySpace expressly aimed its conduct at Indiana (*Wallace*, 778 F.2d at 394; *IMO*, 155 F.3d at 261) or engaged in contractual negotiations in Indiana (*RAR*, 107 F.3d at 1277). On the contrary, it was Plaintiff that aimed its conduct at California when it sought out MySpace.

Plaintiff, an Indiana company, chose to develop a television program based on a California company's website. Plaintiff traveled from Indiana to California to solicit MySpace with an offer to jointly produce and exploit a television series based on MySpace.com users. MySpace flatly rejected Plaintiff's offer and proposal while in California, and then DIRECTV, a separate California company, produced a TV program which, according to Plaintiff, was similar to Plaintiff's Program. *See* Cplt. at ¶ 8-18. Thus, the only connection between this chain of events and Indiana is Plaintiff, and the only "dealings" between the parties took place in California. Based on the foregoing, MySpace could not "reasonably anticipate being haled into court" in Indiana. *RAR*, 107 F.3d at 1277; *see Purdue*, 338 F.3d at 780 ("it must be the activity of the defendant that that makes it amenable to jurisdiction, not the unilateral activity of the plaintiff").

Plaintiff is also unable to establish that the action "*directly arise[s]* out of the specific contacts between the defendant and the forum state." *RAR*, 107 F.3d at 1278 (italics in original).

Plaintiff's complaint fails to allege any connection between MySpace's operation of MySpace.com and the conduct upon which Plaintiff's lawsuit is based. Plaintiff claims Defendants plagiarized and stole Plaintiff's concepts, ideas, and expression in Plaintiff's Program which Plaintiff allegedly disclosed during a visit to MySpace's office in California. *See* Cplt. at ¶¶ 20-34. This purportedly wrongful conduct is entirely independent of MySpace's prior operation of its Internet website. Plaintiff's legal claims do not "directly arise" from the MySpace.com website any more than they arise from Google.com or CNN.com. Because the conduct alleged in the complaint does not "directly arise" out of the MySpace's supposed past contacts with Indiana, this Court does not have specific jurisdiction over MySpace. *RAR*, 107 F.3d at 1278; *Steel*, 154 F.3d at 715.

The underlying purpose of due process protections for non-resident defendants is "to ensure that a defendant's amenability to jurisdiction is not based on fortuitous contacts, but on contacts that demonstrate a real relationship with the state with respect to the transaction at issue." *Purdue*, 338 F.3d at 780. Nothing could be more "fortuitous" than for defendants to be haled into an Indiana court merely because Plaintiff developed a television program based on MySpace.com, showed up at MySpace's doorstep in California, and offered to sell its program to MySpace (which MySpace rejected).

DIRECTV's distribution of the DIRECTV Program throughout the country, including Indiana, is not sufficient to establish DIRECTV's "purposeful availment" of Indiana law or to confer specific jurisdiction over DIRECTV with respect to Plaintiff's tort claims.[6] As discussed above, it is not enough for Plaintiff to show that it was damaged in Indiana; it must be shown that Indiana was the "focal point" of DIRECTV's contacts with the forum. *Wallace*, 778 F.2d at 394, citing *Calder*, 465 U.S. at 788-789 (upholding personal jurisdiction where defendants "expressly aimed" their conduct towards California); *IMO*, 155 F.3d at 261 (holding that personal jurisdiction was lacking absent evidence that defendant "expressly aimed" its tortious conduct at New Jersey); *Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1079-80 (10th Cir. 1995) (plaintiff's allegation that it was harmed in forum state by defendant's intentional business tort was insufficient to establish personal jurisdiction); *Southmark*, 851 F.2d at 772-773 (same). This applies with equal force to cases involving media (such as television): the plaintiff must establish that the forum state (Indiana) was the "focal point" of the challenged television broadcast. *Busch v. Viacom Int'l, Inc.*, 2007 WL 548760, *4 (N.D. Tex. 2007), citing *Calder*, 465 U.S. at 788-789.

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[6] Plaintiff does not allege any contract claims against DIRECTV, only tort claims.

Neither DIRECTV's satellite television in general, nor DIRECTV's Program, are directly aimed at Indiana, concern Indiana, or have Indiana as their "focal point." *See* Ishimoto Aff. at ¶ 4. On the contrary, the focal point of the DIRECTV Program was MySpace.com, an Internet website based in California. *See id.* There is nothing alleged in the complaint, nor any other facts that can be shown by Plaintiff, to suggest that DIRECTV could foresee being sued in Indiana simply because it broadcast the DIRECTV Program – having nothing to do with Indiana – across the nation. *Purdue*, 338 F.3d at 780 (holding that it must have been foreseeable to defendant that its contacts with the forum state would make it amenable to jurisdiction). Because Plaintiff has failed to allege that Indiana was the "focal point" of DIRECTV's conduct, or that DIRECTV's conduct was "expressly aimed" at Indiana, DIRECTV's prior contacts with Indiana cannot serve as a basis for this Court's personal jurisdiction over DIRECTV. *Wallace*, 778 F.2d at 394; *IMO*, 155 F.3d at 261; *Far West*, 46 F.3d at 1079-1080; *Southmark*, 851 F.2d at 772-773; *Busch*, 2007 WL 548760, at *4.

Finally, FIM cannot be subject to specific jurisdiction because it has no contacts whatsoever with Indiana. *See* Dotson Aff. at ¶ 3. FIM's mere stock ownership of MySpace and partial common ownership with DIRECTV are insufficient to impute the Indiana contacts of those companies (if any) to FIM or to confer jurisdiction over FIM. *Central States*, 230 F.3d at 943; *see also*, *Purdue*, 338 F.3d at 788, fn.17. Therefore, this Court has no personal jurisdiction over FIM.

Because neither MySpace, DIRECTV nor FIM are subject to personal jurisdiction in this Court, Plaintiff's Complaint should be dismissed in its entirety. FRCP 12(b)(2).

B. COUNTS TWO, THREE, AND FOUR OF THE COMPLAINT ARE PREEMPTED

(1) The Copyright Preemption Rule

Federal courts have exclusive subject matter jurisdiction over claims arising under the 1976 Copyright Act. *See* 28 U.S.C. 1338(a). Congress has expressly limited the states' ability to legislate matters sounding in copyright by giving the Copyright Act a broad preemptive effect. Section 301(a) of the Copyright Act states that:

> [A]ll legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright . . . are governed exclusively by this title. . . . [N]o person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

17 U.S.C. § 301(a). This provision sets forth a two-part test to determine whether a purported right under state law is preempted (and thus subject to dismissal) (the "Copyright Preemption Test").

First, the work in which the right is asserted must be fixed in a tangible form and come within the subject matter of copyright (the "Subject Matter Prong"). *Baltimore Orioles, Inc. v. Major League Baseball Players Ass'n*, 805 F.2d 663, 674 (7th Cir. 1986), *cert. denied,* 480 U.S. 941 (1987). Second, the purported state right must be equivalent to the rights of a copyright owner under the Copyright Act (the "Equivalency Prong"). *Id.* A right under state law is "equivalent" to one of the rights under the Copyright Act if it is violated by the exercise of any of the exclusive rights set forth in Section 106 of the Copyright Act. *Baltimore*, 805 F.2d at 676. Section 106 grants the owner of a copyright the exclusive rights to reproduce (whether in original or derivative form), distribute, perform, and display the copyrighted work. 17 U.S.C. § 106; *Nimmer on Copyrights* § 1.01[B][1]; *Baltimore*, 805 F.2d at 676. Purported state law claims that are preempted by the Copyright Act must be dismissed as a matter of law. *Id.*; *Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 309 (7th Cir. 2004) (state law claims preempted by Copyright Act must be dismissed).

(2) Plaintiff's "Plagiarism," Theft, and Conversion Claims Are Preempted

(a) Plaintiff's Claims Meet the Subject Matter Prong of the Copyright Preemption Test

Plaintiff alleges "plagiarism" (Cplt. at ¶¶ 26-31 [Count III]) and unjust enrichment (*Id.* at ¶¶ 23-25 [Count II]), and also seeks to recover treble damages under the ICVA based on Defendants' "theft" and "conversion" of intellectual property embodied in Plaintiff's Program (Cplt. at ¶¶ 24, 33 [Count IV]). These claims easily satisfy the Subject Matter Prong of the Copyright Preemption Test. Plaintiff contends that in December 2005, after developing the concept for its program, its "film crew" traveled across the United States visiting, interviewing, and filming different MySpace.com users. *See* Cplt. at ¶¶ 9-10. Thus, by its own admission, Plaintiff's Program, and the concepts, ideas, expression, and storylines embodied therein, are "fixed in a tangible form" (i.e., embodied in a "copy," such as film, by or under the authority of the author). *Baltimore*, 805 F.2d at 674; 17 U.S.C. § 101. Plaintiff's Program is also within the subject matter covered by the Copyright Act, which specifically protects original works of authorship such as motion pictures or audio visual works. *See* 17 U.S.C. § 102(a)(6).

Moreover, while it is true that the Copyright Act excludes "ideas" from the protections of copyright (only the "expression" of ideas is protectable), matters expressly excluded from copyright protection still fall within the "subject matter" of the Copyright Act for the purposes of preemption. *Hoehling v. Universal City Studios, Inc.*, 618 F.2d 972, 980 (2nd Cir. 1980). As explained by one court:

> State law claims do not avoid preemption simply because they are based on the improper use of uncopyrightable material contained in works subject to copyright. If the rule were otherwise, states would be free to regulate materials Congress has assigned to the public domain.

Nash v. CBS, Inc., et al., 704 F.Supp. 823, 832 (N.D. Ill. 1989) (emphasis added); *Hoehling*, 618 F.2d at 980 (citing *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964)). "[T]he shadow actually cast by the [Copyright] Act's preemption is notably broader than the wing of its protection." *Berge v. Bd. of Tr. of the Univ. of Ala.*, 104 F.3d 1453, 1463 (4th Cir. 1997) (holding that plaintiff's claim of conversion of her "ideas and methods" was preempted by the Copyright Act). Thus, to the extent Plaintiff's Program "includes non-copyrightable material, such as ideas," these are not sufficient to remove Plaintiff's claims from the ambit of copyright preemption. *Briarpatch*, 373 F.3d at 306; *Compco Corp. v. Day-BVrite Lighting, Inc.*, 376 U.S. 234 (1964); *Baltimore*, 805 F.2d at 676; *Aldridge v. The GAP, Inc.*, 866 F.Supp. 312, 315 (N.D. Tex. 1994). Therefore, Plaintiff's "plagiarism," unjust enrichment, theft and conversion claims satisfy the Subject Matter Test for copyright preemption. *Baltimore*, 805 F.2d at 676 (holding that videotaped performance falls within the subject matter of the Copyright Act and satisfies the Subject Matter Test for preemption purposes); 17 U.S.C. § 301(a).

(b) Plaintiff's Claims Meet the Equivalency Prong of the Copyright Preemption Test

Plaintiff's so-called "plagiarism" claim satisfies the Equivalency Prong of the Copyright Preemption Test. Although Defendants have found no Indiana statute or case recognizing a state cause of action for "plagiarism" (see discussion below), Count Three of the Complaint (titled "Plagiarism") alleges that Defendants "plagiarized, misappropriated, and converted" Plaintiff's original work of authorship (i.e., Plaintiff's Program) without authorization or compensation. *See* Cplt. at ¶¶ 27-30. Plaintiff's supposed right to be free from "plagiarism" meets the Equivalency Prong because it would be infringed "by the mere act of reproduction, performance, distribution, or display" of Plaintiff's Program, and the creative expressions embodied therein. 17 U.S.C. § 106. Because the rights asserted under Plaintiff's claims are "equivalent" to rights covered by the Copyright Act, Plaintiff's "plagiarism" claim must be dismissed. *Baltimore*, 805 F.2d at 674; *Briarpatch*, 373 F.3d at 309; 17 U.S.C. § 301(a); *Daboud v. Gibbons*, 42 F.3d 285, 288 (5th Cir. 1995) (holding that state law claim of plagiarism was preempted by the Copyright Act). Indeed, Plaintiff's cause of action for "plagiarism" is nothing more than a common law copyright claim, which the Copyright Act has abolished. *Cmty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 731 (1989) ("the [Copyright] Act is expressly intended to create a federal law of uniform, nationwide application by broadly preempting state statutory and common-law copyright regulation"); *Harris Custom Builders, Inc. v. Hoffmeyer*, 92 F.3d 517, 520 (7th Cir. 1996), citing *Nimmer on Copyright* § 4.01; 17 U.S.C. § 301(a).

In *Caldwell-Gadson*, this Court expressly held that plagiarism claims are preempted by the Copyright Act. 2001 WL 1388052, at *4. The plaintiff in that case was married to one of defendant's employees. *Id.* She created a book that was to be used in connection with an awards ceremony sponsored by the company. *Id.* When the company used her creative materials (without consent or compensation), she sued for copyright infringement and plagiarism. *Id.* The Court held:

> A claim alleging simple plagiarism, on the other hand, is preempted by the Copyright Act. Black's Law Dictionary defines "plagiarism" as "the act of appropriating the literary composition of another, or parts or passages of his writings . . . and passing them off as the product of one's own mind. If the material is protected by copyright, such act may constitute an offense of copyright infringement." (Citation omitted). Thus, the right protected against plagiarism is a right equivalent to a right comprised by a copyright. Other courts have found that state law claims alleging plagiarism are subject to preemption under the Copyright Act. *See United States ex rel. Berge v. Bd. of Tr. of the Univ. of Ala.*, 104 F.3d 1453, 1464 (4th Cir. 1997) ("Berge's charge of plagiarism and lack of attribution can only amount to, indeed, are tantamount to, a claim of copyright infringement. . . ."); *Wharton v. Columbia Pictures Indus., Inc.*, 907 F. Supp. 144, 146 (D. Md. 1995) (claims alleging plagiarism are preempted by Copyright Act). The court concludes that Plaintiff's claim for plagiarism in general is preempted by the Copyright Act.

Id. at *10 (emphases added).

As observed by this Court in *Caldwell*, the Fourth Circuit has also expressly found plagiarism claims to be preempted by the Copyright Act. *Berge*, 104 F.3d at 1464. The plaintiff in *Berge* alleged that researchers and professors at the University of Alabama plagiarized her 1989 dissertation when preparing their own dissertation in 1990. *Id.* at 1456. The plaintiff in *Berge*, like Plaintiff in this case, alleged that defendants had copied her ideas and concepts. *Id.* at 1463. Following a jury verdict in plaintiff's favor, the Court of Appeal reversed the judgment below, concluding that: "Berge's charge of plagiarism and lack of attribution can only amount to, indeed, are tantamount to, a claim of copyright infringement . . . ." *Id.* at 1464.

Plaintiff's unjust enrichment claim also meets the Equivalency Prong of the Copyright Preemption Test. In support of its unjust enrichment claim, Plaintiff alleges that Defendants "wrongfully exploit[ed] . . . the ideas, concepts and storylines underlying [Plaintiff's Program] as well as the expression of those concepts, ideas and storylines . . . ." *See* Cplt. at ¶ 25. Yet, as noted above, Plaintiff's alleged right to be free from the unauthorized exploitation of Plaintiff's creative work would be infringed by the mere act of reproduction, performance, distribution, and display of Plaintiff's work – exclusive rights enumerated by the Copyright Act. 17 U.S.C. § 106; *Briarpatch*, 373 F.3d at 306. In *Briarpatch*, plaintiff alleged that the defendant producer was unjustly enriched when it produced a movie based on the novel for which plaintiff owned the exclusive rights. *Id.* The court held that the act constituting unjust enrichment was the act of turning the novel into a movie. In the court's words, "[t]his act would, in and of itself, infringe the adaptation rights protected by § 106(2)" of the Copyright Act. *Id.* Therefore, like the plaintiff in *Briarpatch*, Plaintiff's unjust enrichment claim is "equivalent" to the rights within the scope of the Copyright Act and preempted as a matter of law. *Briarpatch*, 373 F.3d at 306; *Baltimore*, 805 F.2d at 676.

Plaintiff's theft and conversion claims are equally defective and are nothing more than poorly disguised copyright claims. The author of creative materials cannot escape the preemption provisions of the Copyright Act by asserting state law claims for the theft or conversion of his or her intellectual property. *Daboud*, 42 F.3d at 288 (where defendant rock band copied plaintiff's song, plaintiff's state law claims for conversion and misappropriation were preempted by the Copyright Act); *Berge*, 104 F.3d at 1463 (holding that plaintiff's conversion claim was "clearly preempted" by federal copyright law). As explained by the Fifth Circuit in *Daboud*, "[t]he core of each of these state law theories of recovery in this case, without detailing the specific elements comprising of each claim, is the same: the wrongful copying distribution, and performance of [plaintiff's work]." *Id.* at 289; *see also*, *Rosciszewski v. Arete Assoc., Inc.*, 1 F.3d 225, 230 (4th Cir. 1993) (holding that plaintiff's state law claim alleging defendant's unauthorized copying of computer program was preempted because it was not qualitatively different than copyright claim and because "the core of both causes of action . . . is the unauthorized copying of [plaintiff's work]"); *Nash*, 704 F.Supp. at 832 (state law claims for misappropriation of concepts and storylines are preempted by the Copyright Act). A plaintiff may not avoid the Copyright Act by presenting copyright claims "in the voice of state law claims. . . . [I]f the language of the act could be so easily circumvented, the preemption provision would be useless, and the policies behind a uniform Copyright statute would be silenced." *Daboud*, 42 F.3d at 288.

In *Dielsi v. Falk*, a case that is on all fours with this case, the federal court addressed whether the Copyright Act preempted state law claims of "conversion" of one's intellectual property. The plaintiff in *Dielsi* had written a script for an episode of a popular TV series and submitted the script to defendants, the producers of the series. *Dielsi*, 916 F.Supp. 985, 988 (C.D. Cal. 1996). Subsequently, the defendants aired an episode of the program which, according to plaintiff, was based on the script he had written. Plaintiff sued defendants for, among other things, "conversion," claiming that defendants had "wrongfully copied the ideas expressed in [plaintiff's script]," and did so without plaintiff's consent and for defendants' own pecuniary gain. *Id.* at 988, 992. The court held that plaintiff's conversion claim was "clearly preempted by federal copyright law because it makes the crucial allegation that Defendants have wrongfully used and distributed Plaintiff's work of authorship." *Id.* at 992 (emphasis added); *see also*, *Worth v. Universal Pictures*, 5 F.Supp.2d 816, 822 (C.D. Cal. 1997) (holding that screenwriter's action for conversion against defendant that "stole" screenwriter's idea for a movie was preempted by the Copyright Act). The Copyright Act necessarily preempts state law conversion claims "where the plaintiff alleges only the unlawful retention of its intellectual property rights and not the unlawful retention of the tangible object embodying its work." *Berge*, 104 F.3d at 1463.

In short, claims of plagiarism, unjust enrichment, theft, or conversion of the ideas and expression embodied in a plaintiff's original work, regardless of how they are cast, are "'part and parcel' of a copyright claim." *Dielsi*, 916 F.Supp. at 992; *see also*, *Ehat v. Tanner*, 780 F.2d 876, 878 (10th Cir. 1985), *cert. denied*, 479 U.S. 820 (Plaintiff "did not allege a state law claim of conversion to recover for the physical deprivation of his notes. Instead, he sought to recover for damage flowing from their reproduction and distribution. Such reproduction interferes with an intangible literary or artistic property right equivalent to copyright."). If a claim is "but another label for reproduction," it is "a preempted right 'within the general scope of copyright.'" *Nimmer on Copyright* § 1.01[B](1)(f)[iii] citing *Durham Indus., Inc. v. Tomy Corp.*, 630 F.2d 905, 918; *Berge*, 104 F.3d at 1464 ("where the core of the state law theory of recovery, as in conversion, goes to the wrongful copying, in this case, the plagiarism of [plaintiff's work], it is preempted"), citing *Daboub*, 42 F.3d at 289. For these reasons, the Court should dismiss Counts Two, Three, and Four of the Complaint.

C. COUNTS ONE, THREE, AND FOUR FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

To survive a motion to dismiss for failure to state a claim, "a complaint must allege facts bearing on all material elements necessary to sustain a recovery under some viable legal theory." *Looper Maint. Serv., Inc. v. City of Indianapolis*, 197 F.3d 908, 911 (7th Cir. 1999); FRCP 12(b)(6). Although well-pled facts are accepted as true, legal conclusions are not: "'A complaint which consists of conclusory allegations unsupported by factual assertions fails even the liberal standard of Rule 12(b)(6).'" *Jackson v. E.J. Brach Corp.*, 176 F.3d 971, 978 (7th Cir. 1999), quoting *Palda v. Gen. Dynamics Corp.*, 47 F.3d 872, 875 (7th Cir. 1995).

(1) Count One of the Complaint for Breach of Implied Contract Fails

Plaintiff has failed to allege any of the necessary elements for breach of an implied-in-fact contract against MySpace.[7] Under Indiana law,

> An implied-in-fact contract refers to the class of obligations which arises from mutual agreement and intent to promise, when the agreement and promise have simply not been expressed in words. A contract implied-in-fact arises out of acts and conduct of the parties, coupled with a meeting of the minds and a clear intent of the parties in the agreement.

J.W. v. Hendricks County Office of Family & Children, 697 N.E.2d 480, 484 (Ind. Ct. App. 1998) (internal citation omitted); *see also*, *McCart v. Chief Executive Officer in Charge, Indep. Fed. Credit Union,* 652 N.E.2d 80, 85 (Ind. Ct. App. 1995). Thus, two necessary elements of an implied contract are (1) "acts or conduct of the parties" that evidence a contractual relationship and an intent to be bound; and (2) "a meeting of the minds" reflecting a clear intent by both parties to the agreement. *J.W.*, 697 N.E.2d at 484; *McCart,* 652 N.E.2d at 85. Plaintiff has alleged neither.

In support of its implied contract claim, Plaintiff alleges that its film crew met with two MySpace employees in California. *See* Cplt. at ¶ 10. Plaintiff invited MySpace to collaborate on Plaintiff's Program and offered to sell the rights in the program to MySpace. *Id.* at ¶¶ 9, 11. MySpace declined any involvement with Plaintiff's Program and rejected the offer to purchase the program. *Id.* at ¶ 13. Yet, without alleging any further statements or conduct by either party, Plaintiff claims that during the course of this brief encounter (consisting solely of MySpace's rejection of Plaintiff's offer), a separate "implied contract" materialized under which MySpace promised "not to use or disclose the ideas, concepts, or storylines underlying [Plaintiff's

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[7] Plaintiff's implied-in-fact contract claim is asserted against MySpace only. None of the allegations in Count One even reference DIRECTV or FIM, nor could they, as Plaintiff's implied contract claim stems solely from an alleged meeting with MySpace employees. *See* Cplt. at ¶¶ 10-11.

Program] . . . ." Cplt. at ¶ 20. Then, according to Plaintiff, MySpace, "in concert with" DIRECTV and FIM, aired the DIRECTV Program (which Plaintiff claims was based on Plaintiff's Program). *Id.* at ¶¶ 15, 17.

Conspicuously absent from Plaintiff's Complaint are any allegations of "acts or conduct of the parties" evidencing either party's intent to be bound by a contract prohibiting MySpace from disclosing what transpired at its meeting with Plaintiff. *J.W.*, 697 N.E.2d at 484; *McCart,* 652 N.E.2d at 85. Similarly, Plaintiff fails to allege any conduct or statements to support "a meeting of the minds" by the parties. *J.W.*, 697 N.E.2d at 484; *McCart,* 652 N.E.2d at 85. In fact, Plaintiff alleges just the opposite: that it offered to make a deal with MySpace and that MySpace rejected the offer. Cplt. at ¶ 13. Not a single fact in the Complaint explains what MySpace did or said to create a contract or to evidence its intent to be bound in this way. *J.W.*, 697 N.E.2d at 484; *McCart,* 652 N.E.2d at 85.

Rather than pleading any of the essential facts to support the supposed "implied contract" between the parties, Plaintiff merely asserts the legal conclusion that "the conduct of [the parties] created an implied-in-fact contract . . . ." Cptl. at ¶ 20. As discussed above, conclusory statements like these are not enough to sustain a claim. FRCP 12(b)(6); *Jackson*, 176 F.3d at 978 ("A complaint which consists of conclusory allegations unsupported by factual assertions fails even the liberal standard of Rule 12(b)(6)"). For these reasons, Plaintiff's implied contract claim must be dismissed.

(2) Count Four of the Complaint for Relief Under the Crime Victims' Act Fails

In addition to being preempted by the Copyright Act, Plaintiff's own allegations defeat its claims because the ICVA only applies to conduct that occurs in Indiana. *Yoder Grain, Inc. v. Antalis*, 722 N.E.2d 840, 850 (Ind. Ct. App. 2000). In *Yoder*, the Court rejected an ICVA claim based on conduct that occurred in Ohio**:**

> In their complaint, the Investors allege that Antalis received funds from Baysinger, deposited the funds in his client trust account, and re-disbursed the funds according to Baysinger's instructions. All of Antalis' actions, however, occurred outside of Indiana. Baysinger delivered the funds to Antalis in Ohio; Antalis deposited the funds in his client trust account at a bank in Ohio; Antalis disbursed the funds to Baysinger in Ohio. Thus, even assuming Antalis' actions were criminal, they do not suffice to establish liability under the Crime Victims Relief Act as his actions do not violate Indiana law.

722 N.E.2d 840, 850 (Ind. Ct. App. 2000).

Plaintiff, based in Indiana, alleges that its film crew "traveled around the United States" filming Plaintiff's Program, and "while filming," it met with MySpace in California. Cplt. at ¶¶ 3, 9-10. If, as Plaintiff alleges, MySpace "stole" Plaintiff's ideas and concepts at this California meeting, the alleged misappropriation occurred in California, which does not, and cannot, violate an Indiana criminal statute. *See Koger v. State,* 513 N.E.2d 1250, 1257 (Ind. Ct. App. 1987) (holding that a burglary committed in Ohio could not be used as a predicate act under Indiana RICO because a burglary committed in Ohio was not a violation of Indiana law). "In order to establish a viable claim [under the ICVA], a plaintiff must show a violation of one of the specific code sections and that such violation caused the loss suffered by the plaintiff." *Yoder*, 722 N.E.2d at 850. Because conduct that occurred in California does not violate Indiana criminal statutes and because the ICVA requires the violation of one of the criminal statutes referenced, Plaintiff cannot sustain a claim under the ICVA as a matter of law. *Id.*

(3) Count Two of the Complaint for "Plagiarism" Claim Fails

Not only is Plaintiff's "plagiarism" claim preempted by the Copyright Act (see discussion above), it alleges a cause of action that does not exist. Indiana does not recognize a claim for plagiarism. Despite a diligent search, Defendants have not uncovered a single Indiana case in which a court recognized a state law claim for plagiarism. Indeed, one would not expect to find a state law cause of action for plagiarism in light of the federal copyright preemption discussed above. *See generally*, *Caldwell*, 2001 WL 1388052, at *10.

IV.
CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss Plaintiff's Complaint in its entirety.

Date: April 23, 2007

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2007, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court's system.

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